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JUAN VALENCIA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JUAN VALENCIA,
Plaintiff,

vs.

LDCF CORPORATION; B AND B
PROPERTIES PARTNERSHIP; and
DOES 1 to 10,
Defendants.

Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR DENIAL
OF CIVIL RIGHTS OF A DISABLED
PERSON IN VIOLATIONS OF

1. AMERICANS WITH DISABILITIES
ACT, 42 U.S.C. §12131 et seq.;

2. CALIFORNIA'S UNRUH CIVIL
RIGHTS ACT;

3. CALIFORNIA'S DISABLED
PERSONS ACT;

4. CALIFORNIA HEALTH & SAFETY
CODE;

5. NEGLIGENCE

Plaintiff JUAN VALENCIA ("Plaintiff") complains of Defendants LDCF
CORPORATION; B AND B PROPERTIES PARTNERSHIP; and DOES 1 to 10
("Defendants") and alleges as follows:

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PARTIES

1
2 1. Plaintiff is a California resident with a physical disability. Plaintiff suffers
3 from paraplegia due to T11 and T12 spinal cord injury with fracture which substantially
4 limits his ability to walk. Plaintiff requires the use of a wheelchair at all times when
5 traveling in public.

6 2. Defendants are, or were at the time of the incident, the real property owners,
7 business operators, lessors and/or lessees of the real property for a restaurant
8 (“Business”) located at or about 15307 Parthenia St., North Hills, California.

9 3. The true names and capacities, whether individual, corporate, associate or
10 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,
11 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
12 Court to amend this Complaint when the true names and capacities have been
13 ascertained. Plaintiff is informed and believes, and, based thereon, alleges that each such
14 fictitiously named Defendants are responsible in some manner, and therefore, liable to
15 Plaintiff for the acts herein alleged.

16 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
17 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
18 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
19 the things alleged herein was acting with the knowledge and consent of the other
20 Defendants and within the course and scope of such agency or employment relationship.

21 5. Whenever and wherever reference is made in this Complaint to any act or
22 failure to act by a defendant or Defendants, such allegations and references shall also be
23 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
24 and severally.

JURISDICTION AND VENUE

25
26 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
27 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
28 *seq.*).

- 1 a. A failure to make reasonable modification in policies, practices, or
2 procedures, when such modifications are necessary to afford such
3 goods, services, facilities, privileges, advantages, or accommodations
4 to individuals with disabilities, unless the entity can demonstrate that
5 making such modifications would fundamentally alter the nature of
6 such goods, services, facilities, privileges, advantages, or
7 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 8 b. A failure to take such steps as may be necessary to ensure that no
9 individual with a disability is excluded, denied services, segregated or
10 otherwise treated differently than other individuals because of the
11 absence of auxiliary aids and services, unless the entity can
12 demonstrate that taking such steps would fundamentally alter the
13 nature of the good, service, facility, privilege, advantage, or
14 accommodation being offered or would result in an undue burden. 42
15 U.S.C. § 12182(b)(2)(A)(iii).
- 16 c. A failure to remove architectural barriers, and communication barriers
17 that are structural in nature, in existing facilities, and transportation
18 barriers in existing vehicles and rail passenger cars used by an
19 establishment for transporting individuals (not including barriers that
20 can only be removed through the retrofitting of vehicles or rail
21 passenger cars by the installation of a hydraulic or other lift), where
22 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- 23 d. A failure to make alterations in such a manner that, to the maximum
24 extent feasible, the altered portions of the facility are readily
25 accessible to and usable by individuals with disabilities, including
26 individuals who use wheelchairs or to ensure that, to the maximum
27 extent feasible, the path of travel to the altered area and the
28 bathrooms, telephones, and drinking fountains serving the altered

1 area, are readily accessible to and usable by individuals with
2 disabilities where such alterations to the path or travel or the
3 bathrooms, telephones, and drinking fountains serving the altered area
4 are not disproportionate to the overall alterations in terms of cost and
5 scope. 42 U.S.C. § 12183(a)(2).

6 21. Toilet flush controls shall be hand operated or automatic. Hand operated
7 flush controls shall comply with 309. Flush controls shall be located on the open side of
8 the water closet. 2010 ADA Standards § 604.6.

9 22. Here, Defendants failed to install a proper flush control as the one provided
10 was not installed on the open side. Rather, it was installed on the top of the toilet tank,
11 and is obstructed by the rear handrail, making the button difficult to push.

12 23. The highest operable part of controls, dispensers, receptacles, and other
13 operable equipment shall be placed within at least one of the reach ranges specified in
14 4.2.5 and 4.2.6. Electrical and communications system receptacles on walls shall be
15 mounted no less than 15 in (380 mm) above the floor. 1991 ADA Standards § 4.27.3

16 24. Here, Defendants failed to properly install the paper towel dispenser, toilet
17 paper dispenser, and hand dryer, as they were installed too high.

18 25. Water supply and drainpipes under lavatories and sinks shall be insulated or
19 otherwise configured to protect against contact. There shall be no sharp or abrasive
20 surfaces under lavatories and sinks. 2010 ADA Standards § 606.5.

21 26. Here, Defendants failed to properly insulate the drainpipes under the sink.

22 27. A public accommodation shall maintain in operable working condition those
23 features of facilities and equipment that are required to be readily accessible to and usable
24 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

25 28. By failing to maintain the facility to be readily accessible and usable by
26 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related
27 regulations.

1 29. The Business has denied and continues to deny full and equal access to
2 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be
3 discriminated against due to the lack of accessible facilities, and therefore, seeks
4 injunctive relief to alter facilities to make such facilities readily accessible to and usable
5 by individuals with disabilities.

6 **SECOND CAUSE OF ACTION**

7 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

8 30. Plaintiff incorporates by reference each of the allegations in all prior
9 paragraphs in this complaint.

10 31. California Civil Code § 51 states, “All persons within the jurisdiction of this
11 state are free and equal, and no matter what their sex, race, color, religion, ancestry,
12 national origin, disability, medical condition, genetic information, marital status, sexual
13 orientation, citizenship, primary language, or immigration status are entitled to the full
14 and equal accommodations, advantages, facilities, privileges, or services in all business
15 establishments of every kind whatsoever.”

16 32. California Civil Code § 52 states, “Whoever denies, aids or incites a denial,
17 or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable
18 for each and every offense for the actual damages, and any amount that may be
19 determined by a jury, or a court sitting without a jury, up to a maximum of three times the
20 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any
21 attorney’s fees that may be determined by the court in addition thereto, suffered by any
22 person denied the rights provided in Section 51, 51.5, or 51.6.

23 33. California Civil Code § 51(f) specifies, “a violation of the right of any
24 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)
25 shall also constitute a violation of this section.”

26 34. The actions and omissions of Defendants alleged herein constitute a denial
27 of full and equal accommodation, advantages, facilities, privileges, or services by
28 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.

1 Defendants have discriminated against Plaintiff in violation of California Civil Code §§
2 51 and 52.

3 35. The violations of the Unruh Civil Rights Act caused Plaintiff to experience
4 difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory
5 damages as specified in California Civil Code §55.56(a)-(c).

6 **THIRD CAUSE OF ACTION**

7 **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

8 36. Plaintiff incorporates by reference each of the allegations in all prior
9 paragraphs in this complaint.

10 37. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be
11 entitled to full and equal access, as other members of the general public, to
12 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,
13 and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles,
14 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes
15 of transportation (whether private, public, franchised, licensed, contracted, or otherwise
16 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,
17 places of public accommodations, amusement, or resort, and other places in which the
18 general public is invited, subject only to the conditions and limitations established by
19 law, or state or federal regulation, and applicable alike to all persons.

20 38. California Civil Code § 54.3(a) states, “Any person or persons, firm or
21 corporation who denies or interferes with admittance to or enjoyment of public facilities
22 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an
23 individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for
24 the actual damages, and any amount as may be determined by a jury, or a court sitting
25 without a jury, up to a maximum of three times the amount of actual damages but in no
26 case less than one thousand dollars (\$1,000) and any attorney’s fees that may be
27 determined by the court in addition thereto, suffered by any person denied the rights
28 provided in Section 54, 54.1, and 54.2.

1 39. California Civil Code § 54(d) specifies, “a violation of the right of an
2 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also
3 constitute a violation of this section, and nothing in this section shall be construed to limit
4 the access of any person in violation of that act.

5 40. The actions and omissions of Defendants alleged herein constitute a denial
6 of full and equal accommodation, advantages, and facilities by physically disabled
7 persons within the meaning of California Civil Code § 54. Defendants have
8 discriminated against Plaintiff in violation of California Civil Code § 54.

9 41. The violations of the California Disabled Persons Act caused Plaintiff to
10 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for
11 statutory damages as specified in California Civil Code §55.56(a)-(c).

12 **FOURTH CAUSE OF ACTION**

13 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

14 42. Plaintiff incorporates by reference each of the allegations in all prior
15 paragraphs in this complaint.

16 43. Plaintiff and other similar physically disabled persons who require the use of
17 a wheelchair are unable to use public facilities on a “full and equal” basis unless each
18 such facility is in compliance with the provisions of California Health & Safety Code §
19 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
20 provisions of California Health & Safety Code § 19955 et seq.

21 44. The purpose of California Health & Safety Code § 1995 et seq. is to ensure
22 that public accommodations or facilities constructed in this state with private funds
23 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
24 Title 1 of the Government Code. The code relating to such public accommodations also
25 require that “when sanitary facilities are made available for the public, clients, or
26 employees in these stations, centers, or buildings, they shall be made available for
27 persons with disabilities.
28

1 45. Title II of the ADA holds as a “general rule” that no individual shall be
 2 discriminated against on the basis of disability in the full and equal enjoyment of goods
 3 (or use), services, facilities, privileges, and accommodations offered by any person who
 4 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
 5 Further, each and every violation of the ADA also constitutes a separate and distinct
 6 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
 7 award of damages and injunctive relief pursuant to California law, including but not
 8 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

9 **FIFTH CAUSE OF ACTION**

10 **NEGLIGENCE**

11 46. Plaintiff incorporates by reference each of the allegations in all prior
 12 paragraphs in this complaint.

13 47. Defendants have a general duty and a duty under the ADA, Unruh Civil
 14 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
 15 to the Plaintiff.

16 48. Defendants breached their duty of care by violating the provisions of ADA,
 17 Unruh Civil Rights Act and California Disabled Persons Act.

18 49. As a direct and proximate result of Defendants’ negligent conduct, Plaintiff
 19 has suffered damages.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully prays for relief and judgment against
 22 Defendants as follows:

23 1. For preliminary and permanent injunction directing Defendants to comply
 24 with the Americans with Disability Act and the Unruh Civil Rights Act;

25 2. Award of all appropriate damages, including but not limited to statutory
 26 damages, general damages and treble damages in amounts, according to proof;

27 3. Award of all reasonable restitution for Defendants’ unfair competition
 28 practices;

1 4. Reasonable attorney's fees, litigation expenses, and costs of suit in this
2 action;

3 5. Prejudgment interest pursuant to California Civil Code § 3291; and

4 6. Such other and further relief as the Court deems just and proper.

5 **DEMAND FOR TRIAL BY JURY**

6 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby
7 demands a trial by jury on all issues so triable.

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9 Dated: October 5, 2023

SO. CAL. EQUAL ACCESS GROUP

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12 By: /s/ Jason J. Kim
13 Jason J. Kim, Esq.
14 Attorneys for Plaintiff
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